

EXCERPTS FROM THE SEC TESTIMONY OF  
EGON DURBAN  
TAKEN AND RECORDED SEPTEMBER 12, 2018

In the Matter of: )

TESLA MOTORS, INC. )

WITNESS: Egon Pierre-Durban

PAGES: 1 through 172

PLACE: Securities and Exchange Commission

44 Montgomery Street

Suite 2800

San Francisco, California

DATE: Wednesday, September 12, 2018

The above-entitled matter came on for hearing, pursuant to notice, at 2:20 p.m.

COPY

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 WALKER NEWELL, ESQ.

5 E. BARRETT ATWOOD, ESQ.

6 STEVEN D. BUCHHOLZ, ESQ.

7 Securities and Exchange Commission

8 44 Montgomery Street, Suite 2800

9 San Francisco, California 94104

10 (415) 705-2500

11 newellw@sec.gov

12 atwoode@sec.gov

13 buchholzs@sec.gov

14

15 On behalf of the Witness:

16 JULIE M. RIEWE, ESQ.

17 JOHN T. CHISHOLM, ESQ.

18 Debevoise & Plimpton

19 801 Pennsylvania Avenue, N.W.

20 Washington, D.C. 20004

21 (202) 383-8000

22 jriewe@debevoise.com

23 jtchisholm@debevoise.com

24

25

1 APPEARANCES (CONT.):

2

3 KAREN M. KING, ESQ.

4 Silver Lake

5 2775 Sand Hill Road, Suite 100

6 Menlo Park, California 94025

7 (650) 233-8120

8 karen.king@silverlake.com

9

10 Also Present:

11 Lucien Newell, Video Operator

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## P R O C E E D I N G S

THE VIDEO OPERATOR: Here begins DVD No. 1 in the testimony of Egon Durban in the investigation by the U.S. Securities and Exchange Commission in the matter of Tesla Motors, Inc., File No. SF-04082-A.

Today's date is September 12th, 2018. The time on the video monitor is 2:20.

The video operator today is Lucien Newell, employed by Behmke Reporting and Video Services, Inc., and subcontracted by Diversified Reporting Services, Inc. This video investigation is taking place at 44 Montgomery Suite (sic), Suite 2800, San Francisco.

The court reporter today is Suzanne Andrade, Certified Shorthand Reporter, contracted by Behmke Reporting and Video Services, Inc., and subcontracted by Diversified Reporting Services, Inc.

Counsel, please voice identify yourselves for the record.

MR. NEWELL: Walker Newell and Barrett Atwood on behalf of the Securities and Exchange Commission.

MS. RIEWE: And Julie Riewe and John Chisholm from Debevoise & Plimpton, LLP, on behalf of Mr. Durban and Karen King from Silver Lake also on behalf of Mr. Durban.

MR. NEWELL: Mr. Durban, please raise your

1 right hand.

2 Do you swear or affirm to tell the whole  
3 truth -- the truth, the whole truth, and nothing but the  
4 truth?

5 MR. PIERRE-DURBAN: Yes.

6 Whereupon,

7 EGON PIERRE-DURBAN  
8 was called as a witness and, having been first duly  
9 sworn, was examined and testified as follows:

10 EXAMINATION

11 BY MR. NEWELL:

12 Q Please state your full name, and spell your  
13 name for the record.

14 A Egon Durban. Egon-Pierre Durban. It's  
15 hyphenated. Can I put my hand down?

16 Q Yes, please.

17 A Okay.

18 Q And could you spell that for the record,  
19 please.

20 A Yes. E-g-o-n, dash, P-i-e-r-r-e; Durban,  
21 D-u-r-b-a-n.

22 MR. NEWELL: Thanks, Mr. Durban.

23 We're going to do another round of  
24 introductions for the record. So apologies for the  
25 redundancy.

1 Q Okay. So we'll turn back to that one.

2 Did your call with Mr. Musk on the evening of  
3 August 6 start at about 7:00 o'clock Pacific Daylight  
4 Time?

5 A Yes.

6 Q Let's take a look at Exhibit 4. You have that  
7 in front of you.

8 That appears to be notes. And again, it bears  
9 Bates No. 1712 on the front page.

10 Do you recognize this document, Mr. Durban?

11 A Yes.

12 Q What is it?

13 A These are my notes written down post call with  
14 Mr. Musk.

15 Q And there are three pages of these notes,  
16 right?

17 A Sorry. And then the following -- so the first  
18 page would be my notes following my call with Mr. Musk.

19 The second page would be the notes I made to  
20 have a discussion with Mr. Musk prior to meeting with  
21 him en route to the meeting. So as I was flying down  
22 from San Francisco to Los Angeles.

23 And the third page on August 15th would be my  
24 notes for -- made flying, again, to meet Mr. Musk -- en  
25 route to go meet Mr. Musk to structure my thoughts.



1 phenomenal hardware invention and software invention to  
2 their name. There's almost like a universe of like two  
3 people or three people that have walked the planet and  
4 done that.

5 He's obviously running one of the biggest  
6 technology companies. And for a CEO like this to reach  
7 out to you saying, "I've spoken to multiple of your  
8 CEOs," it's just an honor, and you're flattered.

9 So the other thing I observed for him -- and I  
10 remember it -- is, if there was ever a company that, you  
11 know, I think would benefit by being private, just given  
12 all the volatility and sort of how he was experiencing  
13 the media, said it was probably you, which I'll come  
14 back to.

15 As I look at my notes, I recall him mentioning  
16 a 20 percent premium, which at the time, you know, I  
17 just assumed it to be a 20 percent premium to his  
18 publicly traded stock price.

19 And then, as we go through this, he -- he  
20 wasn't looking -- and it -- and this gets into sort of  
21 the public, private aspect of what he was describing.

22 He wasn't looking for a change of control, per  
23 se, in that -- you know, in our experience, usually when  
24 something like this happens, there was -- there's sort  
25 of a complete -- you know, either the CEO is looking to



1 get more voting control, which is the case in Mr. Dell,  
2 or you're fundamentally changing the equity ownership,  
3 at least an institutional of the business.

4 So, you know, as I look at these notes, he  
5 talked -- he had obviously thought about it. And he  
6 talked about having public investors in -- rolling into  
7 a special purpose vehicle or being able to stay invested  
8 in some way. But he used the words "SPV."

9 He wanted to encourage investors to stay  
10 investors in his company. Again, something I'd never  
11 heard before.

12 He had hired Steve Rosenblum from Wachtel and  
13 a firm named Olson, I think it's Munger, to help advise  
14 him.

15 And then these are sort of -- and then we --  
16 we have -- in the top right here, we talked about -- he  
17 mentioned Saudi Arabia being interested. The United  
18 Emirates/Qatar. I can't remember if I wrote that down  
19 or he wrote that down, in my recollection.

20 Q You mean --

21 A I can't remember if I said that -- those words  
22 or if he -- if he had spoken to them or -- I just can't  
23 remember.

24 And then the -- the -- the bottom half of  
25 the -- or the last sort of -- whatever it is -- quarter

1     looking to replace them."

2           Q     Did he make any specific reference to  
3     discussions he'd had with anyone representing the Saudi  
4     Arabian government about an investment in Tesla?

5           A     I can't recall.

6           Q     Did the Public Investment Fund come up on the  
7     call?

8           A     I can't recall.

9           Q     You're familiar with the Public Investment  
10    Fund?

11          A     Yes. They're -- they're an investor in  
12    Endeavor.

13          Q     We'll call them the PIF for the remainder of  
14    today, if it's all right with you.

15          A     Yes.

16          Q     It was your expectation at the outset of the  
17    call, as Mr. Musk described his interest in a  
18    going-private transaction, that the amount of capital  
19    required for such a transaction was somewhere in the  
20    ballpark of \$50 billion; is that right?

21          A     I can't recall if we specifically talked about  
22    a number amount of capital required for the transaction.  
23    But the ballpark number would be -- that's exactly  
24    right, with him rolling a significant stake.

25          Q     Did Mr. Musk explain to you in any further

1 detail how he envisioned the public equity rolling into  
2 private equity feature of his potential transaction  
3 working?

4 A The -- what I recall from the conversation I  
5 wrote down here, actually, which is he needed to keep  
6 the shareholder number below some amount, which I guess  
7 is 300. And there -- he mentioned the word "special  
8 purpose vehicle." Again, I hadn't really thought of  
9 that.

10 Q Who said you'd need to keep the shareholder  
11 amount below 300, you or --

12 A Mr.

13 Q -- Mr. Musk?

14 A Mr. Musk. Mr. Musk.

15 Again, this is a structure -- I'll -- I'll  
16 reiterate it for the record -- I'd never contemplated as  
17 a way to finance a -- a going-private transaction.

18 Q Were you familiar with the concept of a  
19 special purpose vehicle, as Mr. Musk was using that term  
20 in your conversation?

21 A I mean, I know what a special purpose vehicle  
22 is, yes.

23 Q Did you know what he meant on the call,  
24 though?

25 A Not at all.

1 Q Did you ask any follow-ups to get a sense of  
2 what -- what he was driving at?

3 A No.

4 Q Did you have an understanding on the call  
5 of -- of why he raised the 300 shareholder amount on the  
6 call?

7 A No.

8 Q But you do recall Mr. Musk making reference to  
9 300 shareholders?

10 A Yes.

11 Q Stepping down a bit, you wrote: "Major  
12 investors to remain investors."

13 Do you see that piece of your notes?

14 A Yes.

15 Q Was that also part of what was said on the  
16 call?

17 A Yes. It's the notion that his largest public  
18 shareholders would remain -- or want to remain as  
19 investors.

20 And then actually -- sorry. This is --  
21 conversation is like prompting my memory.

22 Several of them were already investors in  
23 SpaceX. And part of the conversation was him  
24 juxtaposing how much he enjoyed the SpaceX sort of  
25 governance and ownership structure relative to what he



1 was experiencing at Tesla.

2 Q Do you recall Mr. Musk mentioning any specific  
3 large institutional investors on the call?

4 A Fidelity, T. Rowe -- I can't remember. I -- I  
5 can't remember specifically. It -- the large branded  
6 mutual funds that were crossover investors in SpaceX.  
7 That's what I -- I mean, if I had to pull it up, that's  
8 what it would be.

9 Q Do you recall any discussion on the call with  
10 Mr. Musk about the feasibility of large institutional  
11 shareholders rolling over their stakes into a private  
12 Tesla?

13 A No.

14 Q Did you have any reaction to that feature of  
15 the transaction at the time of the call as he said that  
16 to you?

17 A I was listening -- my reaction was I was  
18 listening. I felt it was unprecedented. I didn't  
19 understand it. And we needed to go study it before I  
20 met with him --

21 Q You weren't --

22 A -- to see if it -- yeah. See if it was  
23 feasible. I didn't want to comment on it. He -- he had  
24 seemed to have thought about it.

25 Q Mr. Musk seemed confident in that potential

1 next in connection with going-private transaction.

2 You mentioned that there was a call or a  
3 meeting scheduled for August 10th with Mr. Musk; is that  
4 right?

5 A Yes.

6 Q Did that meeting ultimately take place?

7 A Yes.

8 Q Did you have any communications with Mr. Musk  
9 or anyone else at Tesla between the time these tweets  
10 came out on the morning of August 7th and that August  
11 10th meeting?

12 A I don't recall. But if I did -- I didn't  
13 speak with him. It'd be in the text messages that you  
14 have.

15 Q Did you ever communicate with Mr. Musk via any  
16 nontext message messaging application?

17 A No.

18 Q Did that August 10th meeting ultimately take  
19 place?

20 A Yes.

21 Q Where was that held?

22 A At his home.

23 Q Were others from Silver Lake present?

24 A No.

25 Q Who else was present?



1 A Sam Teller.

2 Q Anyone from Goldman Sachs?

3 A No.

4 Q What had you done or had others at Silver Lake  
5 do between the morning of August 7th until August 10th  
6 to further your understanding of how this going-private  
7 transaction might work?

8 A We created a presentation on this -- that  
9 hopefully you've received.

10 Q What was that presentation meant to convey at  
11 a high level to Mr. Musk?

12 A It was meant to convey sort of what you -- the  
13 process you'd need to undertake, a few theories of  
14 victory around transaction structure, you know, several  
15 alternatives around how you'd try to go at it, the  
16 process and sort of diligence that you would need to do  
17 to raise the capital.

18 And I think, yeah, even some, you know, ideas  
19 around how you'd raise the money.

20 Q Did --

21 A We -- we can pull the presentation and flip  
22 through it if it's helpful.

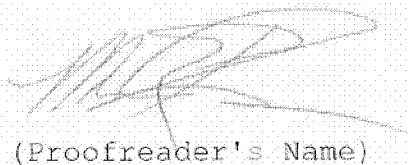
23 Q Did you contact any potential sources of  
24 capital between the morning of August 7th and that  
25 August 10th meeting to assess their interest in a

PROOFREADER'S CERTIFICATE

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In The Matter of: TESLA MOTORS, INC.  
Witness: Egon Pierre-Durban  
File Number: SF-04082-A  
Date: Wednesday, September 12, 2018  
Location: San Francisco, CA

This is to certify that I, Maria E. Paulsen,  
(the undersigned), do hereby swear and affirm that the  
attached proceedings before the U.S. Securities and  
Exchange Commission were held according to the record and  
that this is the original, complete, true and accurate  
transcript that has been compared to the reporting or  
recording accomplished at the hearing.

  
(Proofreader's Name)

9/13/2018  
(Date)

1 STATE OF CALIFORNIA ) ss.

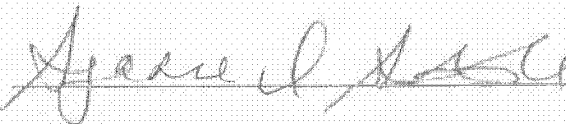
2 COUNTY OF SAN FRANCISCO )

3 I, SUZANNE I. ANDRADE, CSR NO. 10682, a  
4 Certified Shorthand Reporter of the State of California,  
5 do hereby certify:

6 That the foregoing proceedings were taken  
7 before me at the time and place herein set forth; that  
8 any witnesses in the foregoing proceedings, prior to  
9 testifying, were placed under oath; that a verbatim  
10 record of the proceedings was made by me using machine  
11 shorthand which was thereafter transcribed under my  
12 direction; further, that the foregoing is an accurate  
13 transcription thereof.

14 I further certify that I am not interested in  
15 the outcome of said action nor connected with, nor  
16 related to, any of the parties in said action, nor to  
17 their respective counsel.

18 IN WITNESS WHEREOF, I have hereunto  
19 set my hand and affixed my signature this  
20 13th day of September, 2018.

21 

22 SUZANNE I. ANDRADE, CSR 10682  
23  
24  
25